

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

EMERGENCY PROFESSIONAL
SERVICES, INC., an Ohio corporation,

Plaintiff,

Case No:

v.

THE MEMORIAL HOSPITAL
d/b/a MEMORIAL HEALTHCARE,
a Michigan nonprofit corporation,

Defendant.

KOTZ SANGSTER WYSOCKI P.C.

By: Jovan Dragovic (P64578)

Attorneys for Plaintiff

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COMPLAINT

Plaintiff, Emergency Professional Services, Inc., respectfully asserts as follows for its Complaint against Defendant, The Memorial Hospital:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Emergency Professional Services, Inc., is an Ohio corporation with a business address of 7123 Pearl Road, Suite 201, Middleburg Heights, Ohio 44130.

2. Defendant, The Memorial Hospital d/b/a Memorial Healthcare, is a Michigan nonprofit corporation with an address of 826 W. King Street, Owosso, Michigan 48867.

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332, because of complete diversity of citizenship among the Plaintiff and Defendant.

4. Venue is appropriate in this Court because the circumstances giving rise to the instant action occurred and transpired in Owosso, Michigan, and Defendant exists in and continuously and systematically conducts its business in Owosso, Michigan.

FACTUAL ALLEGATIONS

5. Plaintiff and Defendant entered into an Amended and Restated Agreement for Arrangement of Professional Emergency and Hospitalist Services on or about October 1, 2016 (the “Agreement”).

6. Generally, the Agreement obligated Plaintiff to provide, through its affiliated entities, physicians and non-physician practitioners, to provide emergency medicine services and hospitalist services for and on behalf of Defendant and Defendant’s patients.

7. “Attachment 3-A” of the Agreement set forth the compensation required to be made by Defendant to Plaintiff for the Emergency Medicine Services provided by Plaintiff.

8. “Attachment 3-B” of the Agreement set forth the compensation required to be made by Defendant to Plaintiff for the Hospital Medicine Services provided by Plaintiff.

9. On or about January 16, 2018, Defendant in two letters issued a “without Cause” termination notice to Plaintiff terminating the Agreement.

10. On or about January 23, 2018, Plaintiff issued a letter acknowledging the Defendant’s January 16, 2018 termination letters in which Plaintiff reminded Defendant of certain of its contractual obligations under the Agreement with respect to liquidated damages in connection with retention of certain physicians and non-physician practitioners and remaining compensation required under the Agreement.

11. On or about March 8, 2018, Defendant issued a letter to Plaintiff acknowledging Plaintiff’s January 23, 2018 letter and acknowledging the retained physicians and non-physician practitioners and the corresponding liquidated damages amount due and owing to Plaintiff.

12. On or about June 1, 2018, Defendant issued a letter and invoice for payment of liquidated damages corresponding to the retained physicians and non-physician practitioners identified in Defendant's March 8, 2018 letter.

13. Defendant did not pay any of the outstanding compensation amounts due and owing by Defendant to Plaintiff and Defendant did not pay any of the liquidated damage amounts for retained physicians and non-physician practitioners due and owing from Defendant to Plaintiff.

14. On or about June 13, 2018, Defendant's chief financial officer emailed Plaintiff requesting documentation of compensation due under the Agreement.

15. On or about June 28, 2018, Plaintiff provided Defendant a summary describing the outstanding amounts due and owing by Defendant to Plaintiff under the Agreement, inclusive of invoices.

16. Defendant did not pay Plaintiff any of the amounts due and owing by Defendant under the Agreement.

17. Outside counsel for Plaintiff issued a letter dated September 21, 2018 to Defendant seeking payment by Defendant of amounts due and owing to Plaintiff under the Agreement.

18. Defendant has failed and refused to pay Plaintiff its due and owing compensation under the Agreement, compelling Plaintiff to bring the instant action.

COUNT I – BREACH OF CONTRACT

19. Plaintiff hereby incorporates by reference each and every previous assertion set forth above.

20. The Agreement is a valid and enforceable contract.

21. The Agreement obligates Defendant to pay compensation to Plaintiff in accordance with the Agreement's provisions.

22. Defendant has failed and refused to pay Plaintiff its due and owing compensation under the Agreement.

23. Defendant's failure and refusal to pay Plaintiff is a material breach of the Agreement.

24. Defendant's material breach is the direct and proximate cause of monetary damages to Plaintiff in the amount of Three Hundred Seventy Two Thousand Six Hundred Twenty Five and 91/100 Dollars (\$372,625.91).

WHEREFORE, Plaintiff respectfully prays for a judgment in its favor in the amount of Three Hundred Seventy Two Thousand Six Hundred Twenty Five and 91/100 Dollars (\$372,625.91).

COUNT II – ACCOUNT STATED

25. Plaintiff hereby incorporates by reference each and every previous assertion set forth above.

26. Plaintiff sold services to Defendant on open account.

27. Plaintiff rendered invoices to Defendant, which represent amounts of compensation that remain outstanding at this time.

28. During the term of the Agreement, Plaintiff issued invoices and statements to Defendant on a regular and routine basis for compensation due and owing from Defendant to Plaintiff under the Agreement.

29. Plaintiff has issued statements to Defendant for payment of the balance due in the amount of Three Hundred Seventy Two Thousand Six Hundred Twenty Five and 91/100 Dollars (\$372,625.91).

30. An account has become stated against Defendant.

31. Attached hereto as Exhibit 1 and incorporated by reference is the Affidavit of Account Due executed by an officer on behalf of Plaintiff setting forth the balance due to Plaintiff from Defendant in the amount of Three Hundred Seventy Two Thousand Six Hundred Twenty Five and 91/100 Dollars (\$372,625.91).

WHEREFORE, Plaintiff respectfully prays for a judgment in its favor in the amount of Three Hundred Seventy Two Thousand Six Hundred Twenty Five and 91/100 Dollars (\$372,625.91).

PRAYER FOR RELIEF

Plaintiff, Emergency Professional Services, Inc., respectfully prays for a judgment in its favor and against Defendant for monetary damages in the amount of Three Hundred Seventy Two Thousand Six Hundred Twenty Five and 91/100 Dollars (\$372,625.91).

DATED: November 15, 2018

KOTZ SANGSTER WYSOCKI, P.C.

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